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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/694,549

10/27/2003

Birgit Burg

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EXAMINER

OGDEN JR, NECHOLUS

ART UNIT

PAPER NUMBER

1796

MAIL DATE

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/694,549	<b>Applicant(s)</b> BURG ET AL.	
	<b>Examiner</b> Necholus Ogden, Jr.	<b>Art Unit</b> 1796	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE three MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 15 August 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

***Response to Amendment***

1. Claim 1 rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement is withdrawn in view of applicant's Declaration.
2. Claims 1-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jacques Kamiel Thoen et al (6,548,473).
3. Jacques Kamiel Thoen et al disclose a multi-layer detergent tablet having both a compressed and non-compressed portion comprising, in the non-compressed portion of said multi-layered tablet, at least 0.01% of a surfactant (col. 14, lines 54-61) and in particular anionic surfactants such as linear alkyl benzene sulfonate (col. 21, lines 32-42). Jacques Kamiel Thoen et al further disclose the inclusion of builders in an amount from 10-80% by weight (col. 27, lines 41-50) and the at least one non-compressed portion of the detergent tablet is equal to or less than the compressed portion of the tablet (col. 51, lines 11-25). Jacques Kamiel Thoen further teaches that the viscosity of an ingredient in the non-compressed phase, which comprises surfactants, gallants, builders and other adjunct material, is 50 to 100,000 cps (column 12, lines 60-63).

Jacques Kamiel Thoen et al do not specifically teach that said phase is a viscoelastic phase having storage modulus of between 40,000 and 800,000 Pa and a phase shift in the range of 0 to 30 degrees Celsius.

It would have been obvious to one of ordinary skill in the art to expect the compositions of Jacques Kamiel Thoen et al to comprise a storage modulus or phase shift as claimed in the non-compressed layer because Jacques Kamiel Thoen et al

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teaches the use of alkyl benzene sulfonates as surfactants that may be used in the non-compressed phase of the tablet composition and the skilled artisan would expect similar properties, in the absence a showing to the contrary. Furthermore, the court held “it is not necessary in order to establish a prima facie case of obviousness . . . that there be a suggestion or expectation from the prior art that the claimed [invention] will have the same or a similar utility as one newly discovered by applicant,” and concluded that here a prima facie case was established because “[t]he art provided the motivation to make the claimed compositions in the expectation that they would have similar properties.” In *re Dillon*, 919 F.2d 693, 16 USPQ2d 1901 (Fed. Cir. 1990).

### ***Response to Arguments***

4. Applicant's arguments filed 8-15-2008 have been fully considered but they are not persuasive.

Applicant argues that Thoen et al do not teach or suggest a three-layered tablet with a viscoelastic phase placed between the two-tablet layers.

5. The examiner contends and respectfully disagrees because Thoen et al specifically teach that said detergent composition is in the form of a multilayered tablet (column 14). Thoen et al specifically discloses that said tablet is prepared by having a compressed portion in a plurality of molds. The plurality of molds is filled with a non-compressed, non-encapsulating portion (col. 52, lines 47-54) using a modified tablet press comprising modified upper and lower punches. The upper and lower punches of the modified tablet press are modified such that the compressed portion provides one or more indentations, which form the molds to which the one non-compressed portion is

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delivered (col. 51, lines 54-55). Therefore, it can be seen that Thoen et al teaches that said multi-layered tablet is formed with at least three layers and said layers comprise compressed layers and a non-compressed layers. Accordingly, the claims are suggested by the prior art of record.

6. Applicant further argues that Thoen do not suggest a viscoelastic phase tablet.

7. The examiner contends that the term “viscoelastic”, according to applicant’s specification, is a phase that exhibits both viscous and elastic behavior (see page 3, lines 31-33). Therefore, as applicants working examples employ a plethora of ingredients that constitute the “viscoelastic phase”, Thoen clearly suggest many of these ingredients, when combined would clearly read on a viscoelastic phase as broadly defined by the claims and suggested by the specification.

Applicant further argues that Thoen does not suggest tabletted layers in contact with a viscoelastic phase.

The examiner contends that Thoen clearly suggest multi-layer tablets and clearly suggest a non-compressed phase which reads on applicants viscoelastic phase, in the absence of a showing to the contrary, wherein it would have been in the purview of the artisan of ordinary skill in the art to expect the non-compressed phase and the compressed layers are in contact with one another.

*An obviousness determination is not the result of a rigid formula disassociated from the consideration of the facts of a case. Indeed, the common sense of those skilled in the art demonstrates why some combinations would have been obvious where*

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*others would not. See KSR Int'l Co. v. Teleflex Inc., 550 U.S. \_\_\_, 2007 WL 1237837, at \*12 (2007).*

Applicant argues that the entire circumference of the tablet comprises a visible viscoelastic phase and Thoen does not teach this limitation nor would it be obvious to modify his teachings.

The examiner contends, that when applicant's amended phrase is read in its broadest and most reasonable context, the amended phrase may be construed as any layer being visible including a layer that is comprised of compressed and non-compressed material as long as it is "visible". Therefore, the claim may be construed as visible layers which are defined as "layers being seen" over the entire circumference of the tablet, which may include but not limited to coloration or markings which define layers; indentations or embossing, all of which would have been obvious to the tablets suggested by Thoen.

8. The Declaration under 37 CFR 1.132 filed 8-15-08 is insufficient to overcome the rejection of claims 1-25 based upon Thoen et al as set forth in the last Office action because:

9. The Declaration, which adequately outlines the invention at hand, is given little patentable weight because it is not commensurate with the claimed invention and does not convey what applicant is claiming. Applicant's claims are directed to a three layered tablet which comprises a viscoelastic phase which is comprised of 60-85% by weight of alkylbenzene sulfonates. This phase, which is at the heart of applicant's argument, may comprise a plethora of other ingredients, structures and phases. Applicant's claims do

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not preclude phases that comprise non-compressed molds or non-encapsulated portions as disclosed by Thoen, but to the contrary said phases as described by Thoen are invited by applicant's claim language and further said non-compressed and non-encapsulated encompasses applicant's viscoelastic definition. Moreover, the "entire circumference" limitation is met by Thoen since the non-compressed or non-encapsulated layer is throughout the entire tablet as claimed. Accordingly, applicant's claims are not distinguishable over the claimed invention and therefore the rejection is maintained.

The Patent and Trademark Office ("PTO") determines the scope of claims in patent applications not solely on the basis of the claim language, but upon giving claims their broadest reasonable construction "in light of the specification as it would be interpreted by one of ordinary skill in the art." *In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364[, 70 USPQ2d 1827] (Fed. Cir. 2004)

### ***Conclusion***

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Necholus Ogden, Jr. whose telephone number is 571-272-1322. The examiner can normally be reached on M-Thu.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Necholus Ogden, Jr./  
Primary Examiner  
Art Unit 1796

11-22-2008